State Bar Court of the State Bar of California
Hearing Department ☒ Los Angeles ☐ San Francisco

PUBLIC MATTER

Counsel for the State Bar	Case number(s)	(for Court's use)
THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL KIMBERLY G. ANDERSON, NO. 150359 1149 SOUTH HILL STREET LOS ANGELES, CALIFORNIA 90015 TELEPHONE: 213.765.1083	99-O-12702 (Investigation Matters: 03-O-00808) 00-O-13380 (03-O-00943) 01-O-01087 (03-O-01582) 01-O-02669 (03-O-02717) 02-O-11569 (03-O-03687) 02-O-11613 (04-O-11344) 02-O-11618 (04-O-12848) 02-O-13175 (04-O-11881) 02-O-15163 (04-O-10019) 04-O-11283 **PUBLIC MATTER**	ORIGINAL FILED DEC 1 0 2004 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel for Respondent THOMAS R. KOSAKOWSKI,, NO. 186009 PANSKY & MARKLE 1114 FREMONT AVENUE SOUTH PASADENA, CALIFORNIA 91030 TELEPHONE: 213.626.7300		
In the Matter of TERRENCE McGUIRE **Bar #** 90675 **A Member of the State Bar of California (Respondent)**	Submitted to ☐ assigned judge ☒ settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION ☐ PREVIOUS STIPULATION REJECTED	kwiktag® 022 605 766

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted December 4, 1979 (date).

(2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.

(3) All investigations or proceedings listed by case number in the caption of this stipulation, are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 28 pages.

(4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

(6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

(7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- ☐ until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
- ☒ costs to be paid in equal amounts prior to February 1 for the following membership years: 2005, 2006, 2007
  (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- ☐ costs waived in part as set forth under "Partial Waiver of Costs"
- ☐ costs entirely waived

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b).] Facts supporting aggravating circumstances are required.

(1) ☒ Prior record of discipline [see standard 1.2(f)]

(a) ☒ State Bar Court case # of prior case S122089 (97-O-17233, 98-O-01862, 98-O-01059)

(b) ☒ date prior discipline effective May 8, 2004

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: Business and Professions Code, Sections 6103 (2 counts), 6068(b) (2 counts) and Rules 4-100(A) and 4-100(B)(3), Rules of Professional Conduct

(d) ☒ degree of prior discipline six month stayed suspension; 2 years probation

(e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline".

(2) ☐ Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3) ☐ Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(4) ☒ Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.

(5) ☐ Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(6) ☐ Lack of Cooperation: Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

(7) ☒ Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

(8) ☐ No aggravating circumstances are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e).] Facts supporting mitigating circumstances are required.

(1) ☐ No Prior Discipline: Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.

(2) ☐ No Harm: Respondent did not harm the client or person who was the object of the misconduct.

(3) ☐ Candor/Cooperation: Respondent displayed spontaneous candor and cooperation to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.

(4) ☐ Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.

(5) ☐ Restitution: Respondent paid $ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.

(6) ☐ Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.

(7) ☐ Good Faith: Respondent acted in good faith.

(8) ☐ Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.

(9) ☐ Severe Financial Stress: At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

(10) ☐ Family Problems: At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

(11) ☐ Good Character: Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

(12) ☐ Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

(13) ☐ No mitigating circumstances are involved.

Additional mitigating circumstances:

Respondent has agreed to enter into a full stipulation in this matter prior to trial, which will result in judicial economy.

D. Discipline

1. Stayed Suspension.

A. Respondent shall be suspended from the practice of law for a period of five (5) years

☒ i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

☐ ii. and until Respondent pays restitution to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____, and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel

☐ iii. and until Respondent does the following: _____.

B. The above-referenced suspension shall be stayed.

2. Probation.

Respondent shall be placed on probation for a period of five (5) years, which shall commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

3. Actual Suspension.

A. Respondent shall be actually suspended from the practice of law in the State of California for a period of 2 years

☒ i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

☐ ii. and until Respondent pays restitution to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____, and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel

☐ iii. and until Respondent does the following: _____.

E. Additional Conditions of Probation:

(1) ☐ If Respondent is actually suspended for two years or more, he/she shall remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

(2) ☒ During the probation period, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3) ☒ Within ten (10) days of any change, Respondent shall report to the Membership Records Office of the State Bar and to the Probation Unit, all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

(4) ☒ Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all

conditions of probation during the preceding calendar quarter. If the first report would cover less than 30 days, that report shall be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

(5) ☐ Respondent shall be assigned a probation monitor. Respondent shall promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, respondent shall furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the probation monitor.

(6) ☒ Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.

(7) ☐ Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

☐ No Ethics School recommended.

(8) ☐ Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Probation Unit.

(9) ☐ The following conditions are attached hereto and incorporated:

☐ Substance Abuse Conditions ☐ Law Office Management Conditions

☐ Medical Conditions ☐ Financial Conditions

(10) ☒ Other conditions negotiated by the parties: See "other conditions negotiated by parties" at page 26.

☐ Multistate Professional Responsibility Examination: Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel during the period of actual suspension or within one year, whichever period is longer. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.

☒ No MPRE recommended. The Respondent has been ordered to take and pass the MPRE in case No. S122089.

☒ Rule 955, California Rules of Court: Respondent shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 30 and 40 days, respectively, from the effective date of the Supreme Court order herein.

☐ Conditional Rule 955, California Rules of Court: If Respondent remains actually suspended for 90 days or more, he/she shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 120 and 130 days, respectively, from the effective date of the Supreme Court order herein.

☐ Credit for Interim Suspension [conviction referral cases only]: Respondent shall be credited for the period of his/her interim suspension toward the stipulated period of actual suspension.

In the Matter of Terrence McGuire	Case Number(s): 99-O-12702 et.seq.
A Member of the State Bar	

Law Office Management Conditions

a. ☒ Within ___ days/ 18 months/ ____years of the effective date of the discipline herein, Respondent shall develop a law office management/ organization plan, which must be approved by respondent's probation monitor, or, if no monitor is assigned, by the Probation Unit. This plan must include procedures to send periodic reports to clients; the documentation of telephone messages received and sent; file maintenance; the meeting of deadlines; the establishment of procedures to withdraw as attorney, whether of record or not, when clients cannot be contacted or located; and, for the training and supervision of support personnel.

b. ☒ Within ____ days/ ____months 2 years of the effective date of the discipline herein, respondent shall submit to the Probation Unit satisfactory evidence of completion of no less than 8 hours of MCLE approved courses in law office management, attorney client relations and/ or general legal ethics. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent shall not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)

c. ☐ Within 30 days of the effective date of the discipline, respondent shall join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for _____ year(s). Respondent shall furnish satisfactory evidence of membership in the section to the Probation Unit of the Office of Chief Trial Counsel in the first report required.

ATTACHMENT TO STIPULATION

IN THE MATTER OF: TERRENCE MCGUIRE

CASE NOS.: 99-O-12702; 00-O-13380; 01-O-01087; 01-O-02669; 02-O-13175; 02-O-11569;02-O-11613; 02-O-11618; 02-O-15163; AND INVESTIGATION MATTERS: 03-O-00808, 03-O-00942, 03-O-01582, 03-O-03687, 03-O-02717, 04-O-11344, 04-O-12848, 04-O-11881, 04-O-10019 and 04-O-11283

I. FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

RESPONDENT WAIVES ALL VARIANCES BETWEEN THE FACTS AND CHARGES SET FORTH IN THIS STIPULATION AND THOSE SET FORTH IN THE NOTICE OF DISCIPLINARY CHARGES FILED WITH THE STATE BAR COURT.

Case No. 99-O-12702 (Parseghian matter)

Facts - Case No. 99-O-12702

1. Anahit Paraseghian ("Parseghian") was born in Baku, Azerbaijan, (the former Soviet Union), and entered the United States with her brother on July 15, 1994. Her parents entered the United States on July 17, 1992.

2. On June 17, 1998, Paraseghian's application for asylum was referred by the United States Immigration and Naturalization Service ("INS") to the Immigration Court and a Notice to Appear was issued on June 19, 1998 instituting removal proceedings against Parseghian in a case entitled *In the Matter of Anahit Seryozhaevna Parseghian*, INS Case No. A 75-515-171.

3. Parseghian's brother was granted asylum by the Los Angeles Asylum Office on January 20, 1999, and her parents were granted asylum by the Los Angeles Asylum Office on March 12, 1999.

4. On August 25, 1998, Paraseghian hired Respondent and "Terrence McGuire y Associados" to represent her before the INS in connection with her application for political asylum and the removal proceedings.

5. On August 25, 1998, Respondent signed a "Legal Services Contract" whereby Respondent agreed to provide legal services in exchange for an initial payment of $1,000.00 in advanced fees and a payment of $1,500.00 of advanced fees at the hearing. Paraseghian made both payments.

6. On September 14, 1998, Respondent appeared at the first hearing with Parseghian. The Immigration Court scheduled a merits hearing for July 8, 1999 in the removal proceeding with respect to the issue of political asylum. Parseghian met with the Respondent one time at his office to prepare for the merits hearing.

7. On July 8, 1999, Respondent appeared before the Immigration Court and requested a continuance of the merits hearing so that the INS could obtain the files of Paraseghian's parents and brother who had been granted asylum by the Los Angeles Asylum Office. The Immigration Court continued the merits hearing until August 12, 1999.

8. Between July 8, 1999 and August 12, 1999, Paraseghian attempted to contact Respondent by telephoning his office to discuss her asylum application and the upcoming merits hearing on the asylum application. Respondent did not return her telephone calls and did not meet with Parseghian prior to the August 12, 1999, hearing.

9. On August 12, 1999, Respondent appeared before the Immigration Court and requested another continuance of the merits hearing so that he could brief the issue of whether or not Paraseghian had been firmly resettled in Russia, which would render her no longer eligible for asylum. The Immigration Court gave Respondent until September 1, 1999 to file a brief on the issue of resettlement and continued the merits hearing until September 15, 1999.

10. Respondent never filed a brief on the issue of firm resettlement with the Immigration Court and Respondent failed to present any evidence on the issue of resettlement to the Immigration Court. Respondent never advised Parseghian prior to the September 15, 1999 hearing that he had failed to file a brief on the issue of firm resettlement.

11. Between August 12, 1999 and September 15, 1999, Parseghian telephoned Respondent's office approximately 6 times to discuss the September 15, 1999 hearing. Parseghian left messages with Respondent's assistant. Respondent failed to return the telephone calls. Respondent did not meet with Parseghian at any time prior to the September 15, 1999 hearing.

12. On September 15, 1999, Respondent appeared before the Immigration Court and entered into a stipulation with counsel for the INS to withdraw Parseghian's application for asylum in exchange for a grant of withholding of removal. Respondent did not present evidence on the issue of firm resettlement to the Immigration Court. Although Respondent did go into the hallway with Parseghian and an interpreter, Respondent only stated that Parseghian could take withholding of removal or be deported. Respondent did not explain to Parseghian that she would be waiving her political asylum application. Respondent did not explain the consequences of withdrawing Parseghian's political asylum application. Respondent did not explain the stipulation to Parseghian although he falsely told the Immigration Court that he had discussed the stipulation with Parseghian and that she agreed to the stipulation. Respondent waived Parseghian's right to appeal.

Conclusions of Law - Case No. 99-O-12702

13. By failing to meet with Parseghian before the August 12, 1999 and September 15, 1999, merits hearings, by entering into the stipulation to withdraw Paraseghian's application for asylum in exchange for a grant of withholding of removal, by failing to file a brief on the issue of firm resettlement with the Immigration Court, by failing to present evidence to refute the issue of resettlement to the Immigration Court, by waiving Parseghian's right to appeal and by withdrawing Parseghian's asylum application without fully discussing the consequences with her, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule
3-110(A).

14. By failing to respond to Parseghian's inquiries prior to the August 12, 1999 hearing, by failing to respond to Parseghian's inquiries prior to the September 15, 1999 hearing, by failing to advise Parseghian that he was not going to file a brief on the issue of firm resettlement with the Immigration Court, by failing to explain the fact that he was going to withdraw Parseghian's asylum application and enter into a stipulation with the INS attorney rather than conduct the September 15, 1999, merits hearing and by failing to advise Parseghian that he was going to waive her right to appeal, Respondent wilfully failed to respond promptly to reasonable status inquiries from his client and wilfully failed to inform his client of significant developments in her case, in violation of Business and Professions Code, section 6068(m).

Case No. 00-O-13880 (Petrosyan matter)

Facts - Case No. 00-O-13880

15. Varden Petrosyan ("Petrosyan") was born in Yerevan, Armenia and entered the United States on July 1, 1995, with a non-immigrant B-1 visa with authorization to remain in the United States until July 31, 1995.

16. On May 27, 1998, Petrosyan met with a a non-attorney and stated that he wanted to obtain a green card and that his mother already had a green card. The non-attorney agreed he could obtain a green card for Petrosyan. Petrosyan paid the non-attorney $1,500.00 and signed a document entitled, "Agreement Engaging Immigration Consultant," to have LIS ostensibly provide, "non-legal assistance or advice," as an "Immigration Consultant." Respondent was not present during the meeting between Petrosyan and the non-attorney, and therefore, Respondent does not have personal knowledge of the conversation that took place between them.

17. On January 6, 1999, the non-attorney filed an Application for Asylum and/or Withholding of Removal on behalf of Petrosyan. At the time Petrosyan was not entitled to asylum because aliens who had arrived in the United States prior to April 1, 1997 had to have filed an Application for Asylum by no later than April 15, 1998 in order to be eligible for asylum. Petrosyan had not done so. The asylum application falsely stated that Petrosyan was a member of the Jehovah's Witness religious group.

18. On February 2, 1999, Petrosyan attended an Asylum Interview in the immigration case.

19. On February 2, 1999, the INS rejected Petrosyan's Application for Asylum finding that Petrosyan had not presented clear and convincing evidence that he had filed the application within one year of his entry into the United States, and therefore, Petrosyan was barred by statute from obtaining asylum.

20. On February 10, 1999, Petrosyan's asylum application was referred by the INS to the immigration court and Petrosyan was served with a Notice to Appear before an immigration judge in a case entitled, *In the Matter of Varden Petrosyan*, INS Case No. A 75-632-485.

21. Respondent subsequently agreed to represent Petrosyan before the immigration court and to renew the application for asylum.

22. On May 11, 1999, Respondent appeared with Petrosyan in the immigration court and renewed Petrosyan's application for asylum and/or withholding of removal. At no time did Respondent advise Petrosyan that he was statutorily barred from seeking asylum.

23. Respondent should have known at all times herein that Petrosyan was statutorily barred from seeking asylum because Petrosyan had not filed an application for asylum within one year of entry into the United States.

Conclusions of Law - Case No. 00-O-13880

24. By failing to advise Petrosyan that asylum was not available to him and by pursuing an application for political asylum that was not available to Petrosyan, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

25. By accepting money to represent Petrosyan in connection with an application for asylum and by failing to tell Petrosyan that he was not entitled to seek asylum, Respondent wilfully failed to communicate a significant development to his client, in violation of Business and Professions Code,

section 6068(m).

Case No. 01-O-01087 (Abramian matter)

Facts - Case No. 01-O-01087

26. Vartan Abramian ("Abramian") was born in Iran, was a citizen of the Ukraine, and entered the United States on a visitor's visa on October 21, 1992.

27. On February 3, 1993, Abramian filed an Application for Asylum and/or Withholding of Removal within one year of his entry into the United States.

28. On October 31, 1995, the INS instituted removal proceedings against Abramian by issuing an Order to Show Cause to Abramian to appear in the Immigration Court in a case entitled, *In the Matter of Vartan Abramian*, INS Case No. A 70-645-625.

29. Abramian's mother was granted lawful permanent residence with citizenship pending prior to the date when Abramian hired Respondent. Abramian's mother had filed an Alien Relative Petition. Abramian advised Respondent of these facts when he hired Respondent.

30. On March 6, 1996, Abramian hired Respondent to represent him in the immigration case.

31. Respondent's legal administrator signed a "Legal Services Contract" dated March 6, 1996, that agreed that the Law Offices of Terrence Mc Guire would provide legal services to Abramian in exchange for an initial payment of $600.00 and a payment of $600.00 at the last hearing. The "Legal Services Contract" stated Respondent would represent Abramian with respect to the following specific legal services: "defense of deportation asylum (sic)" and "notice of appeal."

32. Abramian made the first $600.00 payment on March 6, 1996, and the second $600.00 payment on January 14, 1997.

33. March 8, 1996, Respondent signed and filed a Notice of Entry of Appearance as Attorney or Representative (Form EOIR 28) to represent Abramian before the INS.

34. On January 15, 1997, the Immigration Court scheduled a merits hearing for Abramian on September 3, 1997. The Immigration Court mailed notice of the hearing to Respondent and Respondent received actual notice of the hearing date.

35. Between January 15, 1997 and September 3, 1997, Abramian states that he telephoned Respondent's office on several occasions to prepare for the September 3, 1997, hearing and that Respondent failed to return Abramian's telephone calls.

36. On September 3, 1997, Respondent did not appear for Abramian's merits hearing. Instead, Respondent sent attorney Stephen Alexander ("Alexander") who appeared on behalf of Abramian. Abramian had not hired Alexander and had never met or spoken with Alexander before the merits hearing. Alexander signed and filed a Notice of Entry of Appearance as Attorney or Representative (Form EOIR 28) to represent Abramian before the INS indicating that he was associated with the International Law Center.

37. Neither Respondent nor Alexander requested relief in the form of adjustment of Abramian's status based on the fact that Abramian's mother was a lawful permanent resident with citizenship pending prior to the hearing on September 3, 1997, and the fact that she had filed an alien relative petition and Abramian had never been married.

38. On September 3, 1997, the Immigration Court entered an order in Abramian's case denying his application for asylum and withholding of deportation, but granting voluntary departure. The September 3, 1997 order of the Immigration Court stated that Abramian's applications for asylum and withholding of deportation were denied, and that the appeal was due by October 3, 1997 should Abramian wish to appeal the decision. The immigration judge stated in his oral decision, "The Respondent's mother and three siblings live in the United States. It is even possible that his mother is a United States citizen although no one has looked into whether that is the fact in this case."

39. Respondent did not file a timely notice of appeal of the decision in Abramian's case, which Respondent had agreed to do in the "Legal Services Contract." Respondent did not inform Abramian that the appeal was required to be filed within 30 days of the September 3, 1997, order.

40. On October 29, 1997, Respondent caused an untimely notice of appeal to be filed in Abramian's name indicating Abramian was filing the appeal "pro se." The appeal was received by the Appeals Processing Unit of the Board of Immigration Appeals ("BIA") on November 14, 1997.

41. On March 16, 1998, the Executive Office for Immigration Review ("EOIR") denied Respondent's appeal as untimely since it was not filed with the Appeals Processing Unit until November 14, 1997.

Conclusions of Law - Case No. 01-O-01087

42. By failing to timely file a notice of appeal of the September 3, 1997 order, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

Case No. 01-O-02669 (Klochkova matter)

Facts - Case No. 01-O-02669

43. On April 13, 2001, Zanna Klochkova ("Klochkova") employed Respondent to defend her against criminal shoplifting charges alleged against her on April 8, 2001.

44. On April 13, 2001, Klochkova met with Respondent's assistant and gave him $2,000.00 in advanced fees to employ Respondent to defend her against any criminal charges. Respondent did not provide Klochkova with a written retainer agreement.

45. On April 14, 2001, the Office of the Los Angeles City Attorney mailed Klochova a letter, which Klochova received within a few days, stating that Klochkova was eligible to avoid criminal prosecution on the shoplifting charge if she agreed to participate in a voluntary City Attorney-sponsored educational Alternative Prosecution Program ("APPS").

46. On April 19, 2001, Klochkova mailed a letter via certified mail to Respondent stating that she was terminating Respondent's employment and demanding a return of the $2,000.00 because she was going to participate in the APPS. Respondent received the letter by no later than April 23, 2001.

47. On May 7, 2001, Klochkova mailed a second letter to Respondent stating that Respondent had not responded to her April 19, 2001 letter terminating Respondent and demanding return of the unearned fees. Klochkova again demanded return of the unearned fees. Respondent received the letter by no later than May 10, 2001.

48. Thereafter, Klochkova received a letter from Respondent dated May 7, 2001. In the letter, Respondent stated that she had entered into a bi-lateral contract which obligated Respondent to

represent her in her criminal defense on May 3, 2001, before the Hollywood Court and obligated Klochkova to pay Respondent's fee. Respondent advised Klochkova that she could not revoke the contract unilaterally merely because she had changed her mind. Respondent did state that he was considering a refund of no more than $1,000.00 since the contract was not in writing. Respondent also stated he was consulting with counsel regarding his legal and ethical obligations to refund the money to her, and that he anticipated further correspondence with her in 30 days.

49. On May 16, 2001, Klochkova sent Respondent another letter requesting a refund of the $2,000.00. Respondent received the letter by no later than May 21, 2001.

50. On June 8, 2001, Klochkova sent another letter to Respondent stating that if she did not receive the $1,500.00 by June 20, 2001, she would file a complaint with the State Bar of California. Respondent received the letter by no later than June 13, 2001, but failed to respond to the letters and failed to return the $2,000.00 in advanced fees or any portion of the money.

51. Respondent has failed to refund the $2,000.00 in unearned fees to Klochkova.

52. Respondent was not obligated to appear in the Hollywood Court on May 3, 2001, on behalf of Klochkova because the City Attorney's office did not file criminal charges against Klochkova.

53. Klochkova did have the right to terminate Respondent's employment and request that Respondent return unearned fees when she changed her mind.

Conclusions of Law - Case No. 01-O-02269

54. By failing to refund the $2,000.00 in unearned fees to Klochkova from April 19, 2001, to the present, Respondent wilfully failed to refund promptly any part of a fee paid in advance that has not been earned, *in violation of Rules of Professional Conduct, rule 3-700(D)(2).*

Case No. 02-O-13175 (Martinez matter)

Facts - Case No. 02-O-13175

55. In 1997, Maria Martinez ("Martinez") met with a non-attorney who assisted her in filing an application for political asylum. Martinez had been born in and was a citizen of Mexico and she arrived in the United States at San Ysidro in 1989.

56. On July 25, 1997, the non-attorney prepared an asylum application on behalf of Martinez.

57. On December 11, 1997, Martinez attended an interview with the INS with respect to her asylum application.

58. Thereafter, the INS denied Martinez's asylum application and instituted removal proceedings against Martinez in the Immigration Court in the *Matter of Maria Martinez*, INS Case No. A 75-496-914 and served Martinez with an Notice to Appear and Order to Show Cause requiring her to appear in the Immigration Court on March 3, 1998 and show cause why she should not be removed from the United States.

59. On March 3, 1998, the Immigration Court set the matter for a merits hearing on June 2, 1998.

60. On June 2, 1998, Respondent appeared on behalf of Martinez, substituted into the case on behalf of Martinez, and the Immigration Court continued the merits hearing to March 19, 1999.

61. On March 19, 1999, Respondent did not appear at the merits hearing, but sent an attorney named Jose Quinones ("Quinones"). Immigration Judge Gordon orally noted on the record, "This Mr. Quinones came in but I have a listing of Terrence McGuire who is your lawyer." Judge Gordon refused to permit Quinones to appear on the case stating, "I didn't like who they sent here for you. I'm not going to let him come in here and... he's going to ask for an extension anyway. ...". The Court stated the matter would be continued by the court to a date to be noticed by the Immigration Court via mail.

62. On August 19, 1999, the Immigration Court served written notice to Respondent that the merits hearing was continued to September 17, 1999.

63. On September 17, 1999, the Respondent did not appear at the hearing, but sent attorney Stephen Alexander ("Alexander") to the hearing. Alexander had never been employed by Martinez and Martinez did not agree that Alexander could represent her. When the Immigration Judge, who was new to the case, asked Alexander, "All we need to do is pick a new date ?" Alexander replied, "I think so." The Court continued the matter to February 28, 2000. Respondent and Alexander had actual notice of the February 28, 2000, merits hearing.

64. On February 28, 2000, Respondent failed to appear at the merits hearing at 8:30 a.m. At 8:50 a.m., when neither the Respondent nor Martinez had appeared in the courtroom, the Immigration Court ordered Martinez removed from the United States in absentia.

65. On March 12, 2000, Respondent sent a letter to Martinez falsely stating to her that, among other things, "An attorney from this office was present to represent you, but you failed to appear," and that, "[a]s a result the Immigration Judge ordered you deported from the United States." Respondent was not present in court on February 28, 2000.

66. On May 17, 2000, Respondent filed a motion to reconsider and reopen the removal proceedings on behalf of Martinez. Respondent did not provide Martinez with a full and complete copy of the motion, but only with the first page of the motion.

67. On November 7, 2000, the Immigration Court denied Martinez's motion to reconsider and re-open the removal proceedings. The Immigration Court concluded the motion failed to contain evidence of exceptional circumstances, which would have justified reopening removal proceedings. In the motion to set aside, the Respondent had asserted, without a declaration from Martinez, that Martinez arrived at court for the February 28, 2000 hearing at 8:30 a.m. and was told by a clerk to go to the waiting room to wait to be called, and that she returned to the Court at 8:45 a.m. to find she had been ordered removed. The Immigration Court concluded that the record contradicted these assertions because Martinez was ordered removed at 8:50 a.m. as opposed to 8:45 a.m. and there was no clerk in the courtroom as the matter had been set for a merits hearing. The Court noted on Mondays that the judge is the only official in the courtroom and there was no clerk. The Court also concluded that Respondent was not present to explain Martinez's absence from the courtroom. The Court concluded that the facts in the motion Respondent prepared on behalf of Martinez could not be viewed as accurate or credible and therefore, they did not amount to the requisite exceptional circumstances to justify re-opening the removal proceedings.

68. On November 28, 2000, Respondent charged Martinez an additional $200.00 to prepare a Notice of Appeal of the Court's decision denying her motion to reopen her case to the BIA. Martinez paid Respondent $200.00 to prepare the Notice of Appeal. At no time did Respondent prepare the Notice of Appeal to the BIA. Respondent was not permitted to withdraw in accordance with rule 3-700(A)(2) of The Rules of Professional Conduct without complying with rule 3-700(D)(2), which required Respondent to return unearned advanced fees upon termination of employment.

Conclusions of Law - Case No. 02-O-13175

69. By failing to appear at the merits hearings on March 19, 1999 and September 17, 1999,

by sending Quinones and Alexander, who were unprepared and whom Martinez had never met or agreed could handle her case to the merits hearings on March 19, 1999 and September 17, 1999, by failing to appear at the February 28, 2000, merits hearing on behalf of Martinez and by preparing a motion to reopen the removal proceedings based upon second-hand hearsay assertions by Respondent rather than preparing a declaration under penalty of perjury signed by Martinez in support of the motion, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

70. By failing to appear at the March 19, 1999, September 17, 1999 and February 28, 2000, merits hearings, by filing a motion to reopen based upon inadequate evidence without a declaration from Martinez and by taking money to file a notice of appeal to the BIA, but then failing to file the appeal and failing to refund the unearned advanced $200.00 fee for filing the Notice of Appeal, Respondent wilfully failed upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client, in violation of Rules of Professional Conduct, rule 3-700(A)(2).

71. By failing to advise Martinez that he did not file a notice of appeal, Respondent wilfully failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in violation of Business and Professions Code, section 6068(m).

Case No. 02-O-11569 (Morales & Garcia matter)

Facts - Case No. 02-O-11569

72. On July 16, 1999, Barbara Garcia Morales ("Morales") and her husband Ubaldo Morales Garcia ("Garcia") were served with Notices to Appear at an Order to Show Cause hearing on August 12, 1999, as to why they should not be removed from the United States in connection with a removal proceeding instituted against them by the INS in related cases entitled, *Matter of Maria Garcia-Morales*, INS Case No. A 77-110-870 and in *Matter of Ubaldo Morales-Garcia*, INS Case No. A 77-110-869. Garcia and Morales are both natives and citizens of Mexico and the Notice to Appear alleged that they had entered the United States without inspection in 1988. Garcia and Morales resided in the United States continuously since 1988.

73. On August 12, 1999, Respondent agreed to represent Garcia and Morales in the immigration court. Respondent appeared on their behalf at the August 12, 1999, hearing. The Immigration Court continued the hearing to October 14, 1999, so that the appropriate applications for cancellation of removal could be prepared and submitted to the Immigration Court. Respondent did not prepare the applications for cancellation of removal.

74. On October 14, 1999, Respondent did not appear at the hearing, but sent another attorney, Stephen Alexander ("Alexander"), who appeared at the hearing instead of Respondent. Alexander submitted the applications for cancellation of removal, but they were incomplete because the fees had not been paid even though Garcia and Morales had given Bernal the fees for the Immigration Court. The Immigration Court continued the merits hearing to November 2, 1999.

75. On November 2, 1999, Respondent submitted Garcia's and Morales' applications for cancellation of removal to the Immigration Court and the merits hearing was continued to August 29, 2000.

76. On August 29, 2000, Respondent appeared at the court hearing. The Immigration Court continued the merits hearing from August 29, 2000, until February 23, 2001.

77. On February 23, 2001, Respondent appeared at the merits hearing. During the February 23, 2001, hearing, the Immigration Judge asked for a more complete letter from the doctor regarding the minor child's hearing loss condition. The Immigration Judge continued the merits hearing until August

21, 2001, because the Judge ruled the doctor's letter was insufficient to show the minor son's hearing loss condition.

78. On August 21, 2001, Morales and Garcia appeared at the immigration Court for the merits hearing. Respondent represented them during the hearing. The Immigration Judge denied Morales' application for cancellation of removal because Respondent failed to present proof that Morales' son was a United States Citizen. Respondent states he advised Morales and Garcia that they needed their son's birth certificate to present to the Immigration Judge and that Garcia and Morales did not provide the same, but Respondent acknowledges that as counsel of record, he was obligated to obtain and present the birth certificate to the court. The Immigration Judge granted Garcia's and Morales' request for voluntary departure.

79. On September 18, 2001, Morales and Garcia filed a Notice of Appeal with the BIA.

80. On December 27, 2002, the BIA issued its decision remanding both Morales' and Garcia's cases for further consideration of their application for cancellation of removal. The Court found that Respondent provided ineffective assistance of counsel by failing to include proof of the United States citizenship of Morales' son.

Conclusions of Law - Case No. 02-O-11569

81. By failing to prepare for the merits hearings and by failing to submit a birth certificate to establish Morales' son was a United States citizen during the August 21, 2001 merits hearing, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

Case No. 02-O-11613 (Gonzalez matter)

Facts - Case No. 02-O-11613

82. Alexis Gonzalez ("Gonzalez") is a native and citizen of Panama who entered the United States on a non-immigrant visa in March 1984 and who has maintained continuous presence in the United States since then. Gonzalez is a homosexual man who feared persecution in Panama.

83. In 1997, Gonzalez heard rumors about an "amnesty program" and he hired a non-attorney immigration service provider, which he believed was a law office (which was actually run by non-attorney immigration service providers) to provide him legal advice. The non-attorneys filed an application for political asylum and/or withholding of removal with the INS, which failed to state that Gonzalez was fearful of persecution in Panama because of his homosexual orientation.

84. Gonzalez appeared at the Asylum Office in Anaheim for an asylum interview.

85. Following the asylum interview, Gonzalez's application was rejected. On May 17, 1998, the INS served Gonzalez with a Notice to Appear in Immigration Court on July 24, 1998, in a case entitled *Matter of Alexis Franklin Gonzalez-Rovira*, INS Case No. A 75-533-946, to show cause as to why he should not be removed from the United States.

86. On July 24, 1998, Gonzalez met with Respondent at the Immigration court and agreed to represent Gonzalez. During the July 24, 1998, hearing, Respondent admitted the factual allegations and the charge of removal contained in the Notice to Appear, renewed the asylum application in the Immigration Court that had previously been filed by the non-attorney immigration service provider with the District Director of the INS and requested to apply for suspension of deportation, or in the alternative, cancellation of removal. The Immigration Court set the matter for a merits hearing on September 21, 1998.

87. On September 14, 1998 and just prior to the second court date, Gonzalez hired Respondent and executed a legal services agreement with "International Law Center." On September 14, 1998, Gonzalez paid Respondent $400.00 and agreed to pay Respondent an additional $1,100.00 to represent him with respect to an application for cancellation of removal. Gonzalez was ineligible for cancellation of removal because he did not have a qualifying relative who was a United States Citizen, which is a necessary element for a successful cancellation of removal application. Gonzalez had advised Respondent prior to the September 21, 1998, hearing that he was a homosexual and that he had learned in April 1998 that he was HIV positive. Gonzalez told Respondent that he was afraid he would not get the proper medical treatment for HIV if he had to return to Panama and that he might be harmed because of his HIV status. Respondent did not discuss Gonzalez's application for political asylum with him further and did not advise him that political asylum was a separate and distinct form of relief from cancellation of removal. Respondent states he told Gonzalez he would be making a constitutional challenge to the cancellation of removal statute.

88. On September 21, 1998, Respondent did not appear at the merits hearing, but sent another attorney, Patricia Whirl Lasarte ("Lasarte"), who Gonzalez had not met and had not agreed to hire, to appear at the merits hearing in the Immigration Court. During the hearing, Lasarte submitted an application that requested "suspension of deportation" instead of cancellation of removal. At the time, neither suspension of deportation nor cancellation or removal was an available remedy to Gonzalez. The court asked Lasarte if Gonzalez was going to proceed with the political asylum application. The court made it clear that the asylum application previously prepared by the non-attorney immigration service provider and mentioned by Respondent at the July 28, 1998, hearing was insufficient to allege even a prima facie case for political asylum because it did not allege Gonzalez was fearful of persecution. The asylum application did not contain any facts relating to Gonzalez's sexual orientation or HIV status. Lasarte then indicated that she was withdrawing Gonzalez's asylum application without discussing the matter with Gonzalez. The Immigration Court asked Gonzalez if he agreed with Lasarte, and Gonzalez, who was not an attorney and who was relying on Respondent and Lasarte for advice, stated that he agreed with Lasarte. The court continued the merits hearing.

89. On March 2, 1999, Respondent and Gonzalez appeared at the merits hearing to address the issues of cancellation of removal and suspension of deportation raised in the application for cancellation of removal Respondent caused to be filed with the Immigration Court on behalf of Gonzalez. The court rejected Gonzalez's application for "suspension of deportation," pre-termitted the application for cancellation of removal and granted Gonzalez voluntary departure from the United States.

90. On March 18, 1999, Respondent caused a Notice of Appeal to be filed with the BIA on behalf of Gonzalez, in which Respondent stated Gonzalez was "pro se" rather than listing himself as the attorney for Gonzalez.

91. On February 22, 2002, Gonzalez's appeal was denied by the BIA. Gonzalez tried to contact Respondent by telephone, but was unable to contact Respondent as his office telephone number had been disconnected. Gonzalez also tried to contact Respondent through alternative telephone numbers and addresses he had received from the State Bar, to no avail.

92. On March 25, 2002, Gonzalez hired new counsel who filed a motion for reconsideration and remand of the case with the BIA and a new application for political asylum.

93. On June 19, 2002, the BIA granted the motion to reopen the case and allow Gonzales to pursue the political asylum application based upon Respondent's ineffective assistance of counsel.

Conclusions of Law - Case No. 02-O-11613

94. By failing to file necessary paperwork, pleadings and exhibits with the court to pursue Gonzalez's political asylum claim, by sending Whirl-Lasarte to appear on behalf of Gonzalez, by withdrawing Gonzalez's application for asylum, by failing to discuss with Gonzalez the fact that he was

not eligible for cancellation of removal or suspension of deportation and by filing a notice of appeal indicating Gonzalez was "pro se" without discussing this with him, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

95. By failing to communicate that the Notice of Appeal would state Gonzalez was representing himself, by failing to tell Gonzalez he had changed his telephone number, and by failing to respond to Gonzalez's telephonic and written requests for status inquiries, Respondent wilfully failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in violation of Business and Professions Code, section 6068(m).

96. By filing the Notice of Appeal in Gonzalez's name indicating he was "pro se" after agreeing to handle the appeal on his behalf and by refusing to perform any additional work on behalf of Gonzalez, Respondent wilfully failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client, in violation of Rules of Professional Conduct, rule 3-700(A)(2).

Case No. 02-O-11618 (Camacho-Garcia matter)

Facts - Case No. 02-O-11618

97. On April 3, 2000, Ruben Camacho-Garcia ("Camacho-Garcia") was issued a notice to show cause as to why he was not removable from the United States in an immigration case entitled *Matter of Ruben Camacho-Garcia*, INS Case No. A 75-692-916. The matter was set for a hearing in the immigration court on May 17, 2000.

98. On May 17, 2000, Camacho-Garcia hired Respondent to represent him in the immigration case.

99. On May 17, 2000, Respondent appeared at a calendaring hearing in the Immigration Court on behalf of Camacho-Garcia, admitted the factual allegations, conceded removability, withdrew a previously filed application for political asylum and applied for cancellation of removal, or in the alternative, voluntary departure. The Immigration Court set the matter for a further court date on July 16, 2000 for Respondent to file an application for cancellation of removal on behalf of Camacho-Garcia. The case was later continued by the Immigration Court until September 26, 2000 and Respondent filed the application for cancellation of removal with the Immigration Court.

100. On September 26, 2000, Respondent appeared at the merits hearing with Camacho-Garcia and the Immigration Court scheduled the matter for a merits hearing on June 11, 2001. The Immigration Court stated there would be no further continuances.

101. On June 5, 2001, Camacho-Garcia met Respondent at his office located at 523 W. Sixth Street, Suite 377, Los Angeles, California and paid Respondent an $150.00 as advanced fees. Respondent gave Camacho-Garcia a receipt that stated, "For preparation of cancellation of removal testimony." Respondent told Camacho-Garcia that the $150.00 was for preparation for the hearing and attendance at the hearing. After paying Respondent $150.00, Respondent told Camacho-Garcia he would meet him at the Immigration Court on June 11, 2001.

102. On June 11, 2001, Respondent failed to appear at the merits hearing in Immigration Court with Camacho-Garcia. The Immigration Court proceeded with the hearing and Camacho-Garcia was forced to represent himself. Respondent did not communicate with Camacho-Garcia at any time after June 11, 2001. Respondent did not earn the $150.00 since he did not appear at the June 11, 2001, hearing as agreed upon. Respondent was required by rule 3-700(A)(2) to comply with rule 3-700(D)(2) of the Rules of Professional Conduct upon terminating his employment. Respondent did not comply

with rule 3-700(D)(2).

Conclusions of Law - Case No. 02-O-11618

103. By failing to attend the June 11, 2001, merits hearing, by failing to communicate with Camacho-Garcia at any time after June 11, 2001 and by failing to return the unearned advanced fee as required by rule 3-700(D)(2) of the Rules of Professional Conduct, Respondent wilfully failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client, in violation Rules of Professional Conduct, rule 3-700(A)(2).

Case No. 02-O-15163 (Orozco-Lizaola matter)

Facts - Case No. 02-O-11618

104. Carmen Orozco-Lizaola ("Orozco-Lizaola") is a native and citizen of Mexico, who entered the United States on a non-immigrant visa in 1995.

105. On November 17, 1995, Orozco-Lizaola married Martin Lizaola ("Lizaola"), who was then a permanent resident of the United States.

106. On April 10, 1997, Lizaola filed a family-based immigrant petition for Orozco-Lizaola, which was approved on July 10, 1997.

107. On December 3, 1997, Orozco-Lizaola gave birth to her son in the United States.

108. In 1999, Orozco-Lizaola has stated that she hired a non-attorney who told her he could obtain a work authorization for Orozco-Lizaola. Instead and without discussing the matter with Orozco-Lizaola, the non-attorney filed an application for asylum. Respondent states that he has no personal knowledge of the conversations between Orozco-Lizaola and the non-attorney which took place before Respondent appeared on behalf of Orozco-Lizaola in the immigration court.

109. Orozco-Lizaola's asylum application was denied and the INS instituted removal proceedings against Orozco-Lizaola in a case entitled *Matter of Carmen Orozco Castillo aka Carmen Orozco-Lizaola*, INS Case No. A 79-524-710.

110. On October 21, 1999, Respondent appeared with Orozco-Lizaola in the Immigration Court. Orozco-Lizaola hired Respondent to represent her in the Immigration Court. The Immigration Court continued the matter to December 2, 1999.

111. Respondent continued to represent Orozco-Lizaola and the Immigration Court scheduled her case for a merits hearing on May 18, 2000. Both Respondent and Orozco-Lizaola were present in Immigration Court when the matter was set for the May 18, 2000, merits hearing and had actual notice of the hearing date.

112. On May 18, 2000, Respondent appeared before the Immigration Court at the merits hearing without Orozco-Lizaola. Orozco-Lizaola has stated that her car had broken down en route to the hearing and she telephoned the non-attorney to advise him of the problem. Orozco-Lizaola has also stated that the non-attorney told her that he would tell Respondent and Respondent would notify the Immigration Court of the problem. Respondent did not notify the Immigration Court of Orozco-Lizaola's car trouble and advised the Immigration Court that he was not aware of the reason for Orozco-Lizaola's failure to appear at the hearing. The Immigration Court ordered Orozco-Lizaola deported in absentia. Respondent states he does not have any knowledge of the conversation which took place between Orozco-Lizaola and the non-attorney regarding the car trouble.

113. Respondent failed to advise Orozco-Lizaola that the Court ordered her deported in absentia on May 18, 2000, even though Respondent had actual knowledge of the Immigration Court's order on May 18, 2000.

114. At no time between May 18, 2000 and December 4, 2001, did Respondent try to contact Orozco-Lizaola. Respondent did not file a motion to reopen the case.

115. On December 6, 2000, Lizaola was naturalized and became a United States citizen.

116. On January 28, 2001, Orozco-Lizaola filed an adjustment application with the Los Angeles INS District Office as a spouse of a U.S. citizen.

117. On December 4, 2001, Orozco-Lizaola appeared before an INS officer for an adjustment interview and learned that she had been ordered removed on May 18, 2000.

118. Orozco-Lizaola demanded her file from Respondent. Respondent did not provide Orozco-Lizaola with her file.

119. After Orozco-Lizaola demanded her file from Respondent, she received a letter from Respondent dated March 28, 2002, stating that she had been deported in absentia for failure to appear at a March 6, 2002, hearing in Immigration Court. There was no March 6, 2002, hearing in Orozco-Lizaola's case. Enclosed with the letter was a copy of an order from the Immigration Court dated March 6, 2002, pertaining to another client of Respondent's in a case entitled, *Matter of Eduardo Romero Lopez*, INS Case No. A 79-524-710.

120. On April 5, 2002, Orozco-Lizaola received another letter from Respondent stating that she had failed to appear for an April 1, 2002, hearing in Immigration Court and was ordered deported in absentia. There was no April 1, 2002, hearing in Orozco-Lizaola's case. Enclosed with the letter was a copy of an order from the Immigration Court dated April 1, 2002, pertaining to other clients of Respondent's in a case entitled, *Matter of Yu Chen*, INS Case No. A 75-697-407 and a related case entitled *Matter of Feng Chen*, INS Case No. A 75-697-953.

121. On April 16, 2002, Orozco-Lizaola received another letter from Respondent stating that she had failed to appear for an April 4, 2002, hearing in Immigration Court and was ordered deported in absentia. There was no April 4, 2002, hearing in Orozco-Lizaola's case. Enclosed with the letter was a copy of an order from the Immigration Court dated April 4, 2002 pertaining to another client of Respondent's in a case entitled, *Matter of Walter Amilcar Montalvo*, INS Case No. A 75-663-802.

122. An immigrant's immigration file is confidential information and the immigrant may waive confidentiality and may authorize the release of information from the immigration file.

Conclusions of Law - Case No. 02-O-15163

123. By failing to notify Orozco-Lizaola of the Immigration Court's order removing her in absentia on May 18, 2000, by failing to notify her of the right to file a motion to reopen the case within 180 days of the May 18, 2000, order and by sending Orozco-Lizaola multiple letters pertaining to unrelated immigration cases involving Respondent's other clients, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

124. By failing to notify Orozco-Lizaola of the Immigration Court's order removing her in absentia on May 18, 2000 and by failing to notify her of the right to file a motion to reopen the case within 180 days of the May 18, 2000 order, Respondent wilfully failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in violation of Business and Professions Code, section 6068(m).

125. By mailing letters to Orozco-Lizaola, advising her that Eduardo Romero Lopez, Yu Chen, Feng Chen and Walter Amilcar Montalvo had failed to appear for hearings in their immigration proceedings and that they had been deported in absentia, Respondent wilfully failed to maintain inviolate the confidence and at every peril to himself, preserve the secrets of his clients, in violation of Business and Professions Code, section 6068(e).

Case No. 03-O-00808 (Villalobos matter)

Facts - Case No. 03-O-00808

126. In or about May 2001, Sonya Villalobos ("Villalobos") hired a non-attorney immigration service provider to assist her in obtaining legal residency status in the United States. The non-attorney told Villalobos that she needed to appear in immigration court on July 9, 2001.

127. On July 9, 2001, Villalobos met Respondent for the first time in the immigration court when she hired Respondent to represent her in her removal proceeding before the immigration court. Respondent submitted Notice of Entry of Appearance as Attorney Before the Immigration Court, which stated he was Villalobos's attorney. During the July 9, 2001 hearing, the immigration court set the matter for another hearing on September 26, 2002. Respondent received actual notice of the hearing date.

128. Immediately after appearing on behalf of Villalobos on July 9, 2001, Respondent ceased performing work on behalf of Villalobos, effectively abandoning his client. At no time did Respondent inform Villalobos that he was withdrawing from employment.

129. On or about September 26, 2002, Respondent failed to appear at the hearing. Villalobos appeared without the Respondent and asked for a continuance, so that she could have the opportunity to find another attorney. Respondent did not file a motion to withdraw from representing Villalobos prior to the September 26, 2002 hearing.

Legal Conclusions - Case No. 03-O-00808

130. By failing to appear at the September 26, 2002 hearing, by failing to inform Villalobos of his intent to withdraw from representing her in the immigration matter, and by ceasing to perform any work for Villalobos after July 9, 2001, Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client in wilful violation of rule 3-700(A)(2).

Case No. 03-O-00943 (Inzunza matter)

Facts - Case No. 03-O-00943

131. In or about April 2000, Sergio Inzunza ("Inzunza") hired a non-attorney immigration service provider to assist him in obtaining legal residency status in the United States. The non-attorney told Inzunza that he would need to appear in the immigration court on July 28, 2000.

132. On July 28, 2000, Inzunza met Respondent for the first time while he was in immigration court for his removal proceeding. Respondent appeared on behalf of Inzunza in the case.

133. Respondent subsequently sent his associate, attorney Charles Kim ("Kim") to appear in the immigration court hearings on behalf of Inzunza. Respondent failed to obtain Inzunza's consent to have Kim handle the hearings.

134. On or about May 17, 2002, the immigration court served Kim with a notice that Inzunza's immigration case was set for a hearing in the immigration court on November 25, 2002.

135. Neither Kim nor Respondent appeared at the November 25, 2002 immigration court hearing. On that date, the court set another hearing for November 27, 2002 and served Kim with notice of the hearing date.

136. Neither Kim nor Respondent appeared at the November 27, 2002 hearing.

137. Respondent failed to properly supervise Kim to ensure that he appeared at the hearings in Inzunza's case.

Legal Conclusions - Case No. 03-O-00943

138. By failing to ensure Inzunza was being represented at hearings he had sent Kim to appear at, and by failing to supervise Kim, Respondent failed to take reasonable steps to avoid reasonably foreseeable prejudice to his client in wilful violation of rule 3-700(A)(2) of the Rules of Professional Conduct.

Case No. 03-O-01582 (Mendoza matter)

Facts - Case No. 03-O-01582

139. On November 2, 1999, Genoveva Mendoza hired Respondent to represent her with respect to an appeal of an October 4, 1999 decision in her immigration case. On November 2, 1999, Mendoza paid Respondent $1,000 in advanced fees to handle the appeal.

140. The deadline to file the appeal was November 3, 1999. Since Mendoza had hired Respondent to file the appeal the day before the appeal was due, and since Respondent states he had to mail the appeal to the Board of Immigration Appeals in Falls Church, VA in order to file it, Respondent states that he advised Mendoza he could not guarantee the appeal would be timely filed. On November 3, 1999, Respondent filed a notice of appearance (EOIR-27 form) in Mendoza's immigration case, but the notice of appeal was not filed by the Board of Immigration Appeals until November 4, 1999.

141. On December 9, 1999, the Board of Immigration Appeals issued a per curiam order finding that the appeal was untimely. Respondent states that the Board of Immigration Appeals' erred in not filing the appeal on November 3, 1999 since Respondent filed his notice of appearance on November 3, 1999.

142. Respondent did not advise Mendoza of the December 9, 1999 decision denying her appeal as untimely until January 2000, at which time, Respondent told Mendoza her appeal was rejected.

Conclusions - Case No. 03-O-01582

143. By failing to timely advise Mendoza that her appeal was denied because the Board of Immigration Appeals accepted it for filing one day late, Respondent wilfully failed to advise his client of a significant development in her immigration case in violation of Business and Professions Code, section 6068(m).

Case No. 03-O-03687 (Vazquez matter)

Facts - Case No. 03-O-03687

144. Jose Vazquez and Maria Orozco hired a non-attorney immigration service provider to assist them in getting green cards. Thereafter, the non-attorney filed an application for political asylum, which was denied by the INS.

145. The asylum application was referred by the INS to the Immigration Court and a Notice to Appear was issued instituting removal proceedings against Vazquez and Orozco. Their case was set for a master calendar hearing on April 14, 2000 and the non-attorney told Vazquez and Orozco they had to appear in the immigration court on April 14, 2000.

146. On April 14, 2000, Respondent appeared at the master calendar hearing with Vazquez and Orozco. Respondent admitted that Vazquez and Orozco were removable, withdrew the asylum application that had been filed on their behalf by the non-attorney and advised the court they would be seeking cancellation of removal and voluntary departure.

147. The case was set for a further master calendar hearing before the immigration court on June 14, 2000. Respondent appeared at the hearing with Vazquez and Orozco and the court continued the case for a merits hearing to January 25, 2001.

148. Between June 14, 2000 and January 25, 2001, Vazquez and Orozco attempted to reach Respondent by telephone to schedule a meeting to prepare for their merits hearing, to no avail.

149. On January 25, 2001, Respondent failed to appear at the merits hearing. The court went forward with the merits hearing and Orozco and Vazquez had to represent themselves. During the hearing, the court continued the case to December 14, 2001 to obtain additional information from Orozco and Vazquez.

150. On December 14, 2001, Respondent appeared in the immigration court and the court continued the case to December 6, 2002. Respondent had actual notice of the December 6, 2002 hearing date.

151. Respondent failed to appear at the December 6, 2002 hearing, and Orozco and Vazquez were forced to complete the merits hearing without Respondent.

Conclusions - Case No. 03-O-03687

152. By failing to appear at the January 25, 2001 and December 6, 2002 merits hearings on behalf of Orozco and Vazquez, Respondent recklessly, repeatedly and intentionally failed to perform competent legal services on behalf of his clients in wilful violation of rule 3-110(A) of the Rules of Professional Conduct.

Case No. 03-O-02717 (Moreno-Serna matter)

Facts - Case No. 03-O-02717

153. Jose Moreno Serna and his wife Georgina Borja Lozano, both natives and citizens of Mexico, entered the United States in 1988.

154. In April 1998, Serna and Lozano contacted a non-attorney immigration service provider for the purpose of obtaining work permits and to apply for cancellation of removal.

155. The non-attorney filed an application for political asylum, to which Serna and Lozano

were not entitled, which was denied in July 1998. Thereafter, the INS instituted removal proceedings against Serna and Lozano by way of a Notice to Appear in Immigration Court.

156. During the August 12, 1998 master calendar hearing in the immigration court, Respondent appeared on behalf of Serna and Lozano and admitted all of the allegations, conceded they were removable, and announced their intention of applying for cancellation of removal for Serna only and not his wife, Lozano. Respondent stated that Serna had entered the United States in 1988.

157. On September 21, 1998, Respondent caused another attorney, Patricia Whirl-Lasarte, to appear in court on behalf of Lozano and Serna. Attorney Whirl-Lasarte only filed the application for cancellation of removal for Serna and did not file one for Lozano. The court set the matter for a merits hearing on April 19, 1999.

158. On April 19, 1999, Respondent appeared with Serna and Lozano at the merits hearing and requested a continuance because he was not prepared to conduct the merits hearing and because he had just discovered Lozano entered the United States in 1988 and may also be entitled to cancellation of removal. The Immigration Judge denied the request for continuance and proceeded with the hearing. She found that the application for cancellation of removal filed on behalf of Serna was inadequate, in that Respondent had failed to establish via the application, testimony of evidence, that Serna continuously resided in the United States for ten years.

Conclusions - Case No. 03-O-02717

159. By failing to submit a colorable application for cancellation of removal on behalf of Lozano, Respondent repeatedly, recklessly and intentionally failed to perform competent legal services in wilful violation of rule 3-110(A) of the Rules of Professional Conduct.

Case No. 04-O-11344 (Gonzalo Hernandez matter)

Facts - Case No. 04-O-11344

160. Gonzalo Hernandez and his wife and daughter employed a non-attorney immigration service provider to obtain legal immigration status for them. Hernandez is a native and citizen of Mexico. The non-attorney filed an application for political asylum on behalf of Hernandez.

161. The INS denied Hernandez's asylum application and instituted removal proceedings against him in the immigration court.

162. Hernandez and his family met and hired Respondent at his first court hearing in the immigration court on August 1, 2001.

163. During the August 1, 2001 hearing, Respondent admitted the allegations against Hernandez, conceded he was removable, withdrew the political asylum application and requested to seek cancellation of removal on behalf of Hernandez. The Immigration Judge ordered the Respondent to file the application for cancellation of removal by February 28, 2003 and set the case for a merits hearing on April 7, 2003. Respondent had actual knowledge of the Immigration Judge's order.

164. Respondent did not file the application for cancellation of removal on February 28, 2003 as ordered by the court, nor did he file them or ensure that they were filed at any time before the April 7, 2003 hearing.

165. During the April 7, 2003 hearing, the Immigration Judge told Respondent he had not filed the application for cancellation of removal. Respondent offered to file the application at that time, but the Judge stated that the papers were too late and ordered Hernandez and his family removed from the United States.

Conclusions - Case No. 04-O-11344

166. By failing to timely file the application for cancellation of removal, Respondent intentionally and recklessly failed to perform competent legal services in wilful violation of rule 3-110(A) of the Rules of Professional Conduct.

Case No. 04-O-12848 (Valle matter)

Facts - Case No. 04-O-12848

167. Rosa Maria Valle is a national and citizen of Mexico, who last entered to United States without inspection by crossing the border at San Ysidro on June 23, 1992.

168. Valle hired Respondent to represent her with respect to removal proceedings which had been brought against her in the immigration court.

169. Respondent appeared at the merits hearing on behalf of Valle and the Court set the matter for a merits hearing regarding the issue of cancellation of removal on April 15, 2004 at 1:00 p.m. Respondent failed to appear at the hearing and failed to file a timely application for cancellation of removal on behalf of Valle. Valle was ordered removed from the United States by the Immigration Judge on April 15, 2004.

Conclusions - Case No. 04-O-12848

170. By failing to timely file the application for cancellation of removal, and by failing to appear on time for the April 15, 2004 merits hearing on Valle's case, Respondent intentionally and recklessly failed to perform competent legal services in wilful violation of rule 3-110(A) of the Rules of Professional Conduct.

Case No. 04-O-11881 (Riquelme matter)

Facts - Case No. 04-O-11881

171. Ignacio and Sonia Riquelme hired Respondent to appeal an August 4, 2003 decision by an immigration court judge denying their applications for cancellation of removal and granting them voluntary departure. The Riquelme's son, Marco Valencia Fiesco, came to the United States with them in July 1988 when he was approximately 1 month old, and has resided in the United States continuously since July 1988.

172. Respondent was to appeal the case on behalf of Ignacio, Sonia, and their son, Marco, but Respondent failed to include Marco's name on the appeal that he filed.

173. Although the Riquelmes hired Respondent to handle the appeal on their behalf, Respondent prepared all paperwork for Ignacio Riquelme's signature, and submitted all documents to the Immigration Court as if the Riquelmes were in pro per.

174. After being advised he had forgotten to include Marco's name on the appeal, Respondent prepared a motion for Ignacio to sign requesting to add Marco's name to the appeal. The motion was denied.

Conclusions - Case No. 04-O-11881

175. By failing to include Marco's name in the appeal, and by preparing documents for Ignacio's signature rather than his own signature, Respondent intentionally and recklessly failed to perform competent legal services in wilful violation of rule 3-110(A) of the Rules of Professional

Conduct.

Case No. 04-O-10019 (Cerca-Morales matter)

Facts - Case No. 04-O-10019

176. In February 2001, Jose Cerca-Morales and Reyna Cerca ("the Cercas"), who were both born in Mexico and are citizens of Mexico, employed a non-attorney immigration service provider, to assist them in applying for lawful permanent resident status.

177. The non-attorney submitted an application for political asylum on behalf of the Cercas, which was denied by the INS, who thereafter instituted removal proceedings in the Immigration Court against the Cercas.

178. On June 7, 2001, Respondent represented the Cercas during their first hearing in the immigration court.

179. During the June 7, 2001 hearing, Respondent admitted the Cercas were removable, withdrew the asylum application that had been filed on their behalf, and sought cancellation of removal.

180. Respondent appeared with the Cercas at another hearing in the immigration court on August 23, 2001 and the case was continued to April 22, 2002.

181. Respondent never explained that the Cercas had to show exceptional and extremely unusual hardship to their United States citizen child in order to obtain cancellation of removal. The Cercas believed they could obtain legal resident status based upon the fact that they had been in the United States a long time, they had a U.S. Citizen son, and they had not been convicted of any felonies.

182. During the April 22, 2002 merits hearing, the Immigration Judge denied the Cercas' applications for cancellation of removal and granted them voluntary departure.

Conclusions - Case No. 04-O-10019

183. By failing to advise his clients that they had to show exceptional and extremely unusual hardship to their United States citizen child in order to obtain cancellation of removal, Respondent wilfully failed to advise them of significant developments in their case in violation of Business and Professions Code, section 6068(m)

Case No. 04-O-11283 (Flores matter):

Facts - Case No. 04-O-11283

184. On June 24, 2003, Erika Flores entered into a Legal Services Contract with Respondent and hired Respondent to represent her in removal proceedings instituted by the INS in the immigration court in the case entitled *Matter of Erika Flores*, INS File No. A96 060 717. Respondent agreed to perform the following legal services, "Application for Cancellation of Removal an (sic) for Filing Supplemental Documents, Court Hearing." Respondent charged Flores $1,500, $300 of which Flores paid to Respondent on June 24, 2003. Flores agreed to pay the balance in monthly payments of $200 per month.

185. Thereafter, Respondent abandoned the case, did not make any court appearances, did not file any documents, did not return unearned fees and did not perform any services of benefit to Flores.

Conclusions - Case No. 04-O-11283

186. By abandoning Flores's case, and ceasing to do any work on Flores's case after being paid $300 on June 24, 2003, Respondent wilfully withdrew from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to his client in violation of rule 3-700(A)(2) of the Rules of Professional Conduct.

187. By the foregoing conduct Respondent wilfully failed to promptly return unearned fees in violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

PENDING PROCEEDINGS

The disclosure date referred to on page one, paragraph A.(6), was November 30, 2004.

OTHER CONDITIONS NEGOTIATED BY THE PARTIES

1) Respondent has been ordered to complete State Bar Ethics School within one (1) year of the effective date of discipline in case no. S122089 (State Bar Court Case Nos. 97-O-17233, 98-O-01862 and 98-O-01059). Respondent shall only be required to complete Ethics School one time. As a separate condition of probation in the instant case, Respondent shall comply with the order relating to completion of Ethics School in Case No. S122089. If Respondent fails to complete Ethics School in Case No. S122089, this shall be considered a separate violation of Respondent's probation in both Case Nos. S122089 and the instant case.

2) Respondent shall pay restitution to Zanna Klochova (or the Client Security Fund, if appropriate), in the amount of $2,000, plus 10% interest per annum accruing from April 19, 2001, and provide proof thereof to the Office of Probation of the State Bar of California no later than 30 days after the effective date of discipline in this matter.

3) Respondent shall pay restitution to Maria Martinez (or the Client Security Fund, if appropriate), in the amount of $200, plus 10% interest per annum accruing from November 28, 2000, and provide proof thereof to the Office of Probation of the State Bar of California no later than 30 days after the effective date of discipline in this matter.

4) Respondent shall pay restitution to Ruben Camacho-Garcia (or the Client Security Fund, if appropriate), in the amount of $150, plus 10% interest per annum accruing from June 11, 2001, and provide proof thereof to the Office of Probation of the State Bar of California no later than 30 days after the effective date of discipline in this matter.

5) Respondent shall pay restitution to Erika Flores (or the Client Security Fund, if appropriate), in the amount of $300, plus 10% interest per annum accruing from June 24, 2003, and provide proof thereof to the Office of Probation of the State Bar of California no later than 30 days after the effective date of discipline in this matter.

AUTHORITIES SUPPORTING LEVEL OF DISCIPLINE

In *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, an immigration attorney who was found culpable of multiple acts of misconduct in 9 client matters was given a three year period of actual suspension. Attorney Valinoti refused to accept responsibility for his misconduct during his testimony in the State Bar Court Hearing Department. Although there are more client matters in the

instant case, Respondent deserves less discipline in this case because he has agreed to stipulate to facts and conclusions of law prior to trial in this matter, which exhibits an acknowledgment and understanding of his wrongdoing.

12/2/04 — Terrence Mc Guire — TERRENCE MCGUIRE
Date — Respondent's signature — print name

12/3/04 — Thomas A. Kosakowski
Date — Respondent's Counsel's signature — print name

12/6/04 — KIMBERLY G. ANDERSON
Date — Deputy Trial Counsel's signature — print name
DEPUTY TRIAL COUNSEL

ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

☒ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.

☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 953(a), California Rules of Court.)

12-8-04
Date

Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on December 10, 2004, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

ELLEN ANNE PANSKY
THOMAS A. KOSAKOWSKI
PANSKY & MARKLE
1114 FREMONT AVE
SOUTH PASADENA CA 91030

[X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

KIMBERLY ANDERSON & CHARLES T. CALIX, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **December 10, 2004**.

Bernadette C. O. Molina
Case Administrator
State Bar Court